

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MIGUEL PULIDO-ROMERO,	)	No. CV-F-05-1016 REC
	)	(No. CR-F-03-5373 REC)
)	
Petitioner,	)	ORDER DENYING "(AMENDMENT
	)	&/or SUPPLEMENTAL TO)
vs.	)	(August 5, 2005, Motion to
	)	Dismiss) MOTION TO
	)	DISMISS/VOID JUDGEMENT FOR
UNITED STATES OF AMERICA,	)	LACK OF TERRITORIAL AND/OR
	)	SUBJECT MATTER JURISDICTION,
	)	(F.R.C.P. Rule 60(b)(4)-(6))
Respondent.	)	(Doc. 76)
)	
)	

On August 5, 2005, petitioner Miguel Pulido Romero, proceeding in pro per, filed a "Motion to Dismiss or Review to Adjust Sentence, For Lack of Territorial Jurisdiction."

By Order filed on August 16, 2005, the court ruled in pertinent part:

1. Petitioner is hereby notified that the court finds that the instant motion should be recharacterized as a motion for relief pursuant to 28 U.S.C. § 2255. Petitioner may withdraw the motion if he does not wish to pursue relief under Section 2255. Should

1 petitioner choose to withdraw the motion, he
2 must file a notice of withdrawal of the
3 motion within 30 days of the filing date of
4 this order. If petitioner fails to file the
notice of withdrawal within 30 days, the
motion shall be adjudicated as a motion for
relief under Section 2255.

5 2. If petitioner decides to proceed pursuant
6 to Section 2255, he must file an amended
7 Section 2255 motion within 30 days of the
8 filing date of this order setting forth all
9 claims upon which he bases relief, the facts
10 upon which he relies in contending that the
claims in the Section 2255 motion are not
time-barred and/or that petitioner is
entitled to equitable tolling. Failure to
timely comply will result in the dismissal of
the Section 2255 motion as time-barred.

11 On September 9, 2005, petitioner filed a pleading captioned
12 "(AMENDMENT &/or SUPPLEMENTAL TO) (August 5, 2005, Motion to
13 Dismiss) MOTION TO DISMISS/VOID JUDGEMENT FOR LACK OF TERRITORIAL
14 AND/OR SUBJECT MATTER JURISDICTION, (F.R.C.P. Rule 60(b)(4)-(6))".
15 Other than the change of the wording of the caption of the motion
16 and the addition of the reference to Rule 60(b), Federal Rules of
17 Civil Procedure, petitioner's motion is identical in all respects
18 to the motion filed on August 5, 2005. Petitioner did not comply
19 in any way with the court's August 16, 2005 Order. However,
20 because of petitioner's reference to Rule 60(b), Federal Rules of
21 Civil Procedure, and because of petitioner's failure to allege
22 facts from which it may be inferred that a motion under Section
23 2255 is not time-barred or that petitioner is entitled to
24 equitable tolling, the court concludes that petitioner elects not
25 to proceed under 28 U.S.C. § 2255 because any such motion is
26 barred by the one-year limitation period and by the terms of

petitioner's written plea agreement.

Petitioner cannot rely on Rule 60(b), Federal Rules of Civil Procedure, as the legal and procedural basis for dismissal of the charges to which he pleaded guilty or for a reduction in his sentence. Petitioner cannot proceed with this motion pursuant to Rule 60(b), Federal Rules of Civil Procedure, because the Federal Rules of Civil Procedure do not apply to criminal cases. See United States v. Andrade-Larrios, 39 F.3d 986, 988 (9th Cir. 1994). Challenges to the legality of a conviction or sentence are brought pursuant to 28 U.S.C. § 2255.

ACCORDINGLY:

1. Petitioner Miguel Pulido-Romero's "(AMENDMENT &/or SUPPLEMENTAL TO) (August 5, 2005, Motion to Dismiss) MOTION TO DISMISS/VOID JUDGEMENT FOR LACK OF TERRITORIAL AND/OR SUBJECT MATTER JURISDICTION, (F.R.C.P. Rule 60(b)(4)-(6))" is denied.

IT IS SO ORDERED.

Dated: September 19, 2005
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE